

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: November 12, 2013		DATE SUBMITTED: October 25, 2013	
DEPARTMENT OF ORIGIN: Eco Development		SUBMITTED BY: Kevin Russell	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Consideration of an interlocal agreement between the City of Bryan and Brazos County Economic Development Foundation, Inc. (BBCEDF), Brazos County and the City of Bryan relating to the funding for the 2013-2014 BBCEDF annual budget.			
SUMMARY STATEMENT: In 2009 the City of Bryan and Brazos County worked together to create the BBCEDF to acquire, develop, and sell land as a part of the Texas Triangle Park. On September 19, the BBCEDF Board approved the FY2014 budget incorporating land acquisition costs, professional expenses, and other expenditures related to the development of the Texas Triangle Park.			
This interlocal agreement clarifies in writing the amounts to be contributed by the City and the County in order to meet FY2014 obligations for the BBCEDF. The total contribution by the City for FY2014 is \$163,911.00. The total contribution by the Brazos County for FY2014 is \$189,759.84.			
The agreement also memorializes the justification for the difference in contributions from the City and the County for the acquisition of the Wheeler Tract. The City contributed \$1,000,000.00 in local matching funds for a federal Economic Development Administration (EDA) grant used to construct infrastructure for the Texas Triangle Park. Therefore the City will contribute \$64,622.40 and the County will contribute \$90,471.24 toward the purchase of the Wheeler Tract. The City and the County will equally share all other obligations of the BBCEDF.			
STAFF ANALYSIS AND RECOMMENDATION: Staff recommends approval of the proposed interlocal agreement as it allows the City of Bryan and Brazos County to fund the operations of the BBCEDF and promote the further acquisition, development, marketing, and sale of property in the Texas Triangle Park. The Brazos County Commissioner's Court and the BBCEDF Board have approved this agreement.			
OPTIONS (In Suggested Order of Staff Preference):			
<ul style="list-style-type: none"> • Approve proposed interlocal agreement • Modify proposed interlocal agreement, which may require future City Council consideration and negotiations with Brazos County • Deny proposed interlocal agreement 			
ATTACHMENTS: Proposed interlocal agreement			
FUNDING SOURCE: General Fund			
APPROVALS: Joey Dunn, 10-28-13; Hugh R. Walker, 10/30/2013			

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 10-31-2013

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 11-02-2013

Revised 05/2013

STATE OF TEXAS §

COUNTY OF BRAZOS §

**INTERLOCAL AGREEMENT BETWEEN
CITY OF BRYAN, TEXAS
BRAZOS COUNTY, TEXAS; AND
CITY OF BRYAN AND BRAZOS COUNTY ECONOMIC DEVELOPMENT FOUNDATION,
INC.**

THIS INTERLOCAL AGREEMENT is entered into by and between the City of Bryan (“City”), a Texas home-rule municipal corporation, Brazos County (“County”), a political subdivision of the State of Texas, and the City of Bryan and Brazos County Economic Development Foundation, Inc. (“BBCEDF”), a Texas Transportation Code local government corporation (“Agreement”), and is effective for all purposes as of October 1, 2013 (“Effective Date”).

WHEREAS, the respective participating governments (the “Parties”) are authorized by the Interlocal Cooperation Act, LOC. GOV’T CODE ANN. §791, to enter into an agreement for to administer a program for local economic development; and

WHEREAS, in 2009, the City coordinated with the County with regards to the creation of the BBCEDF for the purpose of promoting the development of an industrial park in an unincorporated area of Brazos County, just outside the city limits; and

WHEREAS, the City and the County have shared equally in the responsibilities associated with the formation, operation, and funding of the BBCEDF; and

WHEREAS, the BBCEDF entered into several contracts for the purchase of real estate that will be developed, marketed, and governed as the Texas Triangle Industrial Park and Inland Port (“Park”); and

WHEREAS, the County wishes to contract with BBCEDF as its agent pursuant to TEX. LOC. GOV’T CODE ANN. §381.004 to administer the County’s program for local economic development in the Park; and

WHEREAS, the City wishes to contract with BBCEDF as its agent pursuant to TEX. LOC. GOV’T CODE ANN. §380.001 to administer the City’s program for local economic development in the Park; and

WHEREAS, the BBCEDF has contracted with various vendors to provide services related to the development, marketing, and sale of the land in the Park, and has incurred other operational expenses set forth in its annual budget; and

WHEREAS, the City and the County have determined that it is in the best interests of their citizens that the BBCEDF be supported in the development of Park because the economic impact of new jobs, increased property value, and additional utility revenue will benefit the local economy; and

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

A. Annual Budget

1. BBCEDF adopts an annual budget showing reasonably anticipated revenue and expenses for each year. The annual budget is subdivided into an operational component and a real property purchase component.
2. Once a budget has been approved by the BBCEDF Board of directors it will be submitted to the Brazos County Commissioner's Court and the Bryan City Council for review and approval. The City and County agree to make an annual lump sum payment sufficient to cover respective portions of the annual budget within thirty (30) days following approval of the budget by both governing bodies. Each governmental entity's obligation to make a payment is conditional upon the approval of the budget by the governing body of each governmental entity.

B. Operational Costs

3. The BBCEDF budget will include the operational costs associated with the maintenance, development, and marketing of the Park. The operational budget may be offset by any grants, gifts, interest income, or other unencumbered revenue received by the BBCEDF.
4. The City will be required to pay up to fifty percent (50%) of the operational costs of the BBCEDF, and the County will be required to pay up to fifty percent (50%) of those operational costs.

C. Real Property Purchase Costs

5. The BBCEDF budget will include costs associated with the purchase of the real property that constitutes Phase I of the Park, also known as the Wheeler tract. Those costs are to be subdivided between the City and the County, as previously agreed, with the County paying a higher percentage of the annual cost in order to compensate for expenditures by the City for infrastructure improvements being made by the City. For this year the annual contribution from the County shall be \$90,471.24, and the annual contribution from the City shall be \$64,622.40.
6. The BBCEDF budget will include costs associated with the purchase of the real property that constitutes Phase II of the Park, also known as the Diebel tract. The BBCEDF has an option to purchase the Diebel tract, which requires annual option fee payments. The option fee payment for this Agreement is \$80,525.00 and will be paid in the same manner as operational costs of the BBCEDF.

D. Total Annual Contribution for Current Fiscal Year

7. The BBCEDF shall receive the following sums:
 - a. The City shall contribute \$163,911.00 to the BBCEDF this fiscal year.
 - b. The County shall contribute \$189,759.84 to the BBCEDF this fiscal year.

E. Miscellaneous

8. Annual Approval. The obligations of the City and the County under this Agreement are subject to annual approval by the governing bodies of each entity.
9. Term. This Agreement shall continue in force for one (1) year from the Effective Date, or until the real property constituting the Park has been sold or transferred to another entity, the debts and

obligations of the BBCEDF have been paid, and the BBCEDF dissolves pursuant to its governing documents and state law, whichever occurs first.

10. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.
11. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.
12. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.
13. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.
14. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
15. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
16. Interpretation. The parties acknowledge that each has had the assistance of counsel in the review of this agreement, no one party is to be deemed the author of the agreement, and ambiguities shall not be resolved against any party. The caption headings of this Agreement are for reference only and shall not affect its interpretation. This Agreement is entered into for the exclusive benefit of the parties hereto and not for any other third parties. Nothing in this Agreement, expressed or implied, is intended to confer upon any person or entity not a party to this Agreement any rights or remedies under this Agreement.
17. Duplicate Originals. The parties may execute this Agreement in duplicate originals, each of equal dignity. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.

Executed this ____ day of _____, 2013.

ATTEST:

CITY OF BRYAN:

Mary Lynne Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

BRAZOS COUNTY:

APPROVED AS TO FORM:

Duane Peters, County Judge

Bill Ballard, Asst. County Attorney

BRYAN BRAZOS COUNTY ECONOMIC DEVELOPMENT FOUNDATION, INC.

Jason P. Bienski, President